

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
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NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **May 17, 2007**, at 10:00 a.m.
in the Council Chambers, Second Floor of the Glendale City Hall
613 E. Broadway, Glendale, California 91026-4308.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **May 17, 2007**, following the Public Meeting
in the Council Chambers, Second Floor of the Glendale City Hall
613 E. Broadway, Glendale, California 91026-4308.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **May 17, 2007**, following the Public Hearing
in the Council Chambers, Second Floor of the Glendale City Hall
613 E. Broadway, Glendale, California 91026-4308.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **May 17, 2007**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 7
New Section 3324
[Horizontal Sliding Gates](#)

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 109
Section 5189
[Process Safety Management—Definition of Retail Facility](#)

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 7
New Section 3324
[Horizontal Sliding Gates](#)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is initiated as a result of a Division of Occupational Safety and Health (Division) memorandum dated November 10, 2004, with attached Request For New or Change In Existing Safety Order (Form 9). The Division has investigated a number of accidents, including fatalities, involving horizontal sliding gates that have fallen on employees. Typically these gates are made of metal and have openings that span 10 to 40 feet into parking lots or other fenced/secured areas. The majority of accidents have occurred when a worker manually slides the gate into the fully open or closed position beyond its upper support or designed stop point leaving the gate's bottom wheels or track as the only support. Without vertical support, the gate is unstable and falls over onto the employee.

The door and gate industry has participated in the development of several national consensus standards that address construction and installation requirements limited in scope to automated gates such as the American Society for Testing Materials (ASTM) Standard F 2200-02 "Standard Specification for Automated Gate Construction." The majority of serious accidents resulting from gates falling onto employees are associated with manually operated gates. The proposal applies to all horizontal sliding gates since automated gates have similar hazards when their automatic door operators are released allowing the gate to be open or closed manually.

This rulemaking action addresses requirements for positive stops that would limit the travel of horizontal sliding gates to the designed, fully open or closed position and, thus mitigate the hazard of a gate falling onto an employee and causing fatal or serious injury.

New Section 3324. Horizontal Sliding Gates

Subsection (a)

Subsection (a) would require all horizontal sliding gates to be equipped with positive stops or devices that limit the gate travel to the designed, fully open and closed positions. The effect of this provision is to ensure that horizontal gates are designed and equipped with positive stops or devices to limit travel of the gate so that it does not reach a point where it is not adequately supported and could fall or topple over onto an employee.

Subsection (b)

Subsection (b) would require that horizontal sliding gates have positive stops or devices that are constructed and installed to resist impact loads in order to safely contain sliding gate components within the designed stop limits. This provision would have the effect of requiring that positive stops or devices are constructed and installed with the durability to safely contain gates within their stop limits.

Subsection (c)

Subsection (c) would require that horizontal sliding gates be inspected by a qualified person to ensure that gates are maintained in safe operating condition. The effect of this subsection is to ensure that positive stops and devices are inspected and checked for signs of wear or deterioration that would compromise their ability to stop the travel of the gate at its designed limit.

Subsection (d)

Subsection (d) would require that employees responsible for operating or inspecting horizontal sliding gates be instructed in the safe operation of such gates. The effect of this provision would provide employees with instructions and awareness of the potential hazards associated with access and egress that require opening and closing large or heavy horizontal sliding gates.

Subsection (e)

Subsection (e) would require that repairs to gate hardware be performed by a qualified person. The effect of this provision is to ensure that repairs are effective and that gate components such as positive stops and devices safely retain gates within designed open and close limits.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment. All businesses that own and use horizontal sliding gates would need to ensure that horizontal sliding gates are equipped with positive gate stops or devices and that they are maintained in effective operating condition. Gate stops/devices are already required by the manufacturers of such gates.

COST ESTIMATES OF PROPOSED ACTION**Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Also, see the rationale under the heading, “Specific Technology or Equipment.”

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 109
Section 5189
Process Safety Management—Definition of Retail Facility

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

On May 19, 2003, the Board received a CalOSHA Form 9 from the Division of Occupational Safety and Health (Division) requesting the Board to amend the Process Safety Management of Acutely Hazardous Materials (PSM) standard to add a definition for retail facility. This rulemaking was initiated in response to that request.

The PSM standard contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable or explosive chemicals. The standard is intended to eliminate to a substantial degree, the risks to which employees are exposed in petroleum refineries, chemical plants, and other facilities. The state standard is substantially the same as its federal counterpart, 29 CFR 1910.119, Process Safety Management of Highly Hazardous Materials.

The PSM standard applies to a process which involves a chemical at or above the specified threshold quantities listed in appendix A or a process which involves a flammable liquid or gas as defined in subsection (c). The standard provides an exception which exempts retail facilities, oil or gas well drilling or servicing operations, and normally unoccupied remote facilities from application of the standard. The standard provides a definition for “normally unoccupied remote facility” but it does not define “retail facility”.

The proposed revision adds a definition for retail facility that is derived from the definition of retail trade contained in the 2002 edition of the U.S. North American Industrial Classification System (NAICS) Manual. It is necessary to define retail facility in the standard because a number of facilities that handle more than 10,000 pounds of anhydrous ammonia, the threshold quantity that triggers application of the PSM standard, assert that because they sell to end users, i.e. farms, they are retail facilities and are not required to comply with the standard; although the NAICS Manual indicates that these facilities are engaged in wholesale trade. Worst-case predictions for a catastrophic release of 10,000 pounds of anhydrous ammonia estimate a concentration of 200 ppm of ammonia gas approximately one mile from the release. The exposure to employees working much closer to the release would be far greater. The National Institute for Occupational Safety and Health (NIOSH) recommends a guideline of 300 ppm as the Immediately Dangerous to Life and Health (IDLH) concentration for ammonia. The proposed definition would help to distinguish retail facilities, which are organized to sell merchandise in small quantities directly to the general public, from wholesale facilities that supply

institutional and industrial clients and are generally organized to handle products in larger containers that expose employees to a greater risk of injury from chemical releases which the PSM standard is intended to prevent.

The following actions are proposed:

Section 5189. Process Safety Management of Acutely Hazardous Materials

Section 5189(c). Definitions

Subsection (c) contains definitions for terms used in the standard however it contains no definition for retail facility. The proposed amendment adds a definition for retail facility that is substantially the same as the definition of retail trade contained in the NAICS Manual, which aids in distinguishing retail trade from wholesale trade. The definition of retail facility has bearing on the application of the standard since the exception contained in section (b)(1) exempts retail facilities from the requirements of the standard. The effect of the proposed revision is to provide guidance to employers to help them determine whether a facility is a retail facility to ensure the exemption for retail facilities is appropriately applied to establishments in the retail trade sector where chemicals tend to be in small volume packages, containers and allotments making a large release unlikely.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal merely adds a definition for retail facility that is consistent with the general use of that term and the intent of the standard to clarify the scope and application of the standard regarding retail facilities. The proposal does not impose any additional requirements on employers.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in

carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than May 11, 2007. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on May 17, 2007, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

NOTICE OF ADOPTION OF
REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8, Chapter 4, Subchapter 4, Construction Safety Orders, Article 6, Section 1541, **Excavations, General Requirements**

Heard at the July 20, 2006, Public Hearing; adopted on January 18, 2007; filed with the Secretary of State on March 1, 2007; and will become effective on March 31, 2007.

2. Title 8, Chapter 4, Subchapter 4, Construction Safety Orders, Article 30, Section 1730 and New Section 1731, **Trigger Height for Production Residential Roofing.**

Heard at the May 18, 2006, Public Hearing; adopted on January 18, 2007; filed with the Secretary of State on March 2, 2007; and will become effective on April 1, 2007.

3. Title 8; Chapter 4; Subchapter 4; Construction Safety Orders; Article 4; Sections 1529, 1532, 1532.1 and 1535; and Subchapter 7; General Industry Safety Orders; Articles 107; 109 and 110; Sections 5144, 5190, 5198, 5200, 5202, 5207, 5208, 5210, 5211, 5212, 5213, 5214, 5217, 5218 and 5220; and Subchapter 18; Ship Building, Ship Repairing, and Ship Breaking Safety Orders; Article 4; Section 8358; **Assigned Protection Factors for Respirators.**

Heard at the January 18, 2007, Public Hearing; adopted on February 15, 2007; filed with the Secretary of State on March 6, 2007; and became effective on March 6, 2007.

4. Title 8; Chapter 4; Subchapter 7; General Industry Safety Orders; Articles 5 and 6; Sections 3291, 3292, 3295 and 3296; **Load Sustaining Devices Used in Window Cleaning and Building Maintenance Operations.**

Heard at the November 16, 2006, Public Hearing; adopted on February 15, 2007; filed with the Secretary of State on March 27, 2007; and will become effective on April 26, 2007.

A copy of these standards are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: **<http://www.dir.ca.gov/oshsb>** and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: **oshsb@dir.ca.gov**.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Keith Umemoto, Executive Officer